

**CONSERVATION COMMISSION PUBLIC HEARING**  
**June 26, 2012**

**FINAL**

The meeting was called to order at 7:00 p.m. by the Chairperson, Jay Diener, at the Hampton Town Office Meeting Room. Commission Members present were Ellen Goethel, Barbara Renaud, Peter Tilton Jr. and Gordon Vinther. Commission members absent were Sharon Raymond and Steve Scaturro. Alternates present were Nathan Page and Diane Shaw. Rayann Dionne, Conservation Coordinator, was present. Mark Loopley was present representing the Planning Board.

The Minutes of April 24, 2012, were reviewed. Ms. Renaud motioned to approve the April 24, 2012 Minutes, with corrections noted. Mr. Vinther seconded the motion. All were in favor. The Minutes of May 22, 2012 will be reviewed at the July Meeting along with the Minutes of June 26, 2012.

**NHDES APPLICATIONS**

A. 52 Nudd Ave  
Richard Atwood  
Ross Engineering - Agent

This is an after-the-fact Standard Dredge and Fill application for the repaving and expansion of the existing driveway and the installation of a new drainage system within the Town Right-of-Way (ROW). The repaving of the driveway is within the 100 ft setback while the drainage system is between 100-150 ft setback.

Alex Ross of Ross Engineering gave the Commission a brief overview of history of the site. The proposed drainage systems involve a trench drain at the existing low grade at the abutter's driveway (abutter to the east) which will collect storm water and flow to the catch basin at the end of Nudd Ave. Mr. Ross commented that he has been working with Hampton DPW to develop an acceptable drainage system for the site. Mr. Ross shared with the Commission that he had received a letter of support from DPW regarding the newest version of the proposed drainage system.

Mr. Ross also noted that buffer plantings are proposed along the northern property boundary to protect the tidal wetlands.

The Commission shared their concerns about the increased elevation of the repaved driveway which has disrupted the flow of storm water and caused water to back-up and flood 50 Nudd Ave.

Mr. Loopley confirmed that the drain system was going to be on Town property and reminded the applicant that Selectmen approval is needed to work on Town property. Mr. Ross further explained the extensive meetings with DPW and that the current location was DPW's preference. Mr. Loopley commented that DPW may not have authority to approve work on Town land. Mr. Diener also believed this to be the case but that DPW could assist with planning/design efforts. Mr. Ross stated that they would seek their permission, if required.

Mr. Vinther asked if the catch basin at the beginning of the trench was going to be the same, higher or lower than the paver driveway at 50 Nudd Ave. Mr. Ross stated that the catch basin was designed to be at lower grade than the pavers at 50 Nudd Ave making it a low point for capturing water. Mr. Vinther asked if the elevation change along the driveway had been quantified and Mr. Ross replied that it had not been. Mr. Vinther concluded that this is a stark example of selfishness in that the neighbor went out of his way to make his paver driveway low grade so that he would not flood his neighbor and now 52 Nudd has built up his driveway causing flooding for his neighbor. He would not vote to approve this project unless it was for its removal.

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A. 52 Nudd Ave. (cont)  
Richard Atwood  
Ross Engineering - Agent

Mr. Ross stated that the driveway was existing. However, Mr. Vinther responded that several layers have been added to the driveway. Also when the neighbor at 50 Nudd Ave. cautioned and reminded the applicant that permits are required, he did not listen.

Mrs. Goethel also noted that there was a tool shed with concrete pad with the first 50 ft. that was not permitted. Mrs. Goethel also spoke against the application stating treatment of storm water before it gets infiltrated, increase in elevation, and lack of filtration going into the salt marsh.

Mr. Diener opened the discussion up to the public. Mr. Paul Barrett, 60 Nudd Ave., abutter to the east of the applicant's property, was against the application. He was frustrated that his neighbor has conducted work without the necessary permits especially since he had received both Town and State permits for recent work on his property. He also shared concern about the flooding on his property that has occurred as a result of the paving of a grassed area adjacent to his property and increasing the driveway elevation. As a safety precaution, Mr. Barrett installed a handrail along the property edge because of the substantial elevation difference between his driveway and his neighbor's. As there were no more speakers from the public, Mr. Diener brought the discussion back to the Board.

Mrs. Goethel spoke against the application because the changes to the property have resulted in less area for storm water infiltration, redirected storm water onto abutter's property, and sealed surface within 50 ft of the marsh which is not permitted.

Several Commission members voiced concerns about allowing a drainage system to be installed within the Town ROW. The addition of such a feature would be an added maintenance burden for the DPW.

Mrs. Goethel motioned to oppose the granting of the after-the-fact wetlands permit for the repaving and expansion of an existing driveway and installation of a new drainage system within the limits of the Town Right-of-Way (ROW) for the following reasons:

1. Property owner increased the roadside elevation of the driveway, expanded the driveway by paving the vegetated strip between 52 Nudd Ave. and 50 Nudd Ave. , and filled in the existing roadside drainage swale. This caused serious flooding for the abutter at 50 Nudd Ave. There is an increased sheet flow across the elevated pavement onto 50 Nudd Ave. and the storm water which would normally travel through the roadside swale now backs up into 50 Nudd Ave's driveway.
2. Proposed drainage feature in the Town's ROW is expected to correct the flooding issues caused by this violation. The Commission cannot support a storm water treatment design that involves retrofitting the existing Town drainage swale and future maintenance by the Town for the sole purpose of correcting one property owner's egregious error. Instead, the Commission recommends that the property owner Reduce the driveway to its original footprint, re-establish the previous grades, and restore the swale. This will eliminate the flooding on 50 Nudd Ave. and not burden the Town.
3. There are two roof gutters on the southeastern and southwestern sides of the building at 52 Nudd Ave. which discharge onto the paved driveway and flow directly towards Nudd Ave. The southeastern roof gutter use to discharge onto the vegetated strip that has been replaced with pavement. The proposed drainage feature will accept this untreated roof runoff and pipe it to the catch basin at the end of Nudd Ave. This catch basin then empties directly into a tidal ditch. This is a prime example of point source pollution which neither the Commission nor the NHDES can support.

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A. 52 Nudd Ave (Cont)

4. The Commission recommends that the temporary shed which is not permitted with the Concrete slab and large outdoor toolbox be removed from the 50 ft wetland buffer.

Mr. Page seconded the motion, with Mr. Loopley abstaining, all were in favor.

B. Esker Road/436 Winnacunet Road

Ronald Remick

Gove Environmental Services - Agent, Lindsey O'Reilly (Wetland Scientist)

Craig Solomon - Attorney

This Standard Dredge & Fill application is for a temporary impact of 128 sq ft of wetlands for the construction of a pervious driveway. The driveway access from Winnacunet Rd will be abandoned. The applicant has returned with a DES permit application for the installation of a driveway to provide access from Esker Road to the property at 436 Winnacunet. Mr. Remick is proposing a voluntary lot merger to make the small strip a part of the 436 Winnacunet property. He is also proposing an addition to the building and based on its location he wants to abandon the existing driveway to Winnacunet Rd and only use the Esker Rd entrance. The Commission will only be reviewing the Standard Dredge & Fill application as the proposal for the wetland area remains the same. The engineer who developed the plan was not present for this meeting.

The background information for the Wetlands permit application #2011-03233 which was subsequently withdrawn by the property owner is warranted because the impacts to wetland and drainage swale are the same:

1. The Esker Rd parcel is very narrow at approximately 20 ft wide. The width of the existing drainage construction of a 10' wide driveway will involve filling in a large portion of the swale. This will Drastically reduce the capacity of the swale and restrict/redirect the flow of water.
2. Peter Olney, original developer of Esker Rd. commented during the review of permit #2011-03233 on the January 24, 2012 Conservation Commission meeting that this swale was designed as a major drainage component of the Esker Rd development. This swale receives storm water runoff not only from a catch basin located across Esker Rd., but also a significant amount of sheet flow from Esker Rd. and drainage from abutting properties.
3. This swale has been functioning properly for several decades and shows no signs of erosion or deterioration. 40 Esker Rd, which is located to the east of this parcel and shares ownership of the swale, has a very specific deed restriction, which does not allow them to impede or obstruct the flow of water in the swale. Although the deed for the Esker Rd parcel does not contain this same language, it is clear that during the development of the surrounding properties that the protection of this drainage swale was important.

Mr. Solomon read aloud sections from the drainage study conducted by Altus Engineering. Mr. Solomon noted that the proposed site-improvements included the installation of a second catch basin and porous driveway. This proposed second catch basin greatly concerned the Commission because it was not shown on the proposed conditions plan. Failure to identify the location of the catch basin on the plan made it impossible to evaluate its role in the overall drainage for the site. Mr. Solomon was unable to address this issue, but assured the Commission that the discrepancy would be further investigated.

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### B. Esker Road (Cont)

Mr. Solomon also summarized the overall findings of drainage analysis which found that the proposed alternations to the drainage swale will not negatively impact its ability to adequately handle 2-year, 10-year, 25-year, and 100 year storm events because the proposed peak rates of runoff will be decreased and the flow depths in the swale will either be the same or less. The conclusion that the swale's function will not be affected and may actually improve during larger storm events when the volume of water it can handle has been significantly reduced does not make sense. The Commission is fearful that the reduction in the swale's capacity will ultimately cause higher levels of water and increased flow rates within the swale. This in turn may cause erosion or flooding on neighboring properties during large storm events. It is not acceptable to allow a property owner to interfere with an abutter's drainage or cause them unnecessary costs and property damage.

The applicant is proposing a voluntary lot merger to combine the 436 Winnacunnet Rd and Esker Rd parcels and to abandon the existing driveway to 436 Winnacunnet Rd. The Esker Rd parcel abuts Mr. Remick's property at 436 Winnacunnet Rd and does not contain any structures that require access from Esker Rd. The property owner believes that the Esker Rd driveway is necessary because the proposed addition to the existing home will block the existing driveway at 436 Winnacunnet Rd. This is a self-induced hardship and one that could be easily remedied by reconfiguring or reorienting the proposed addition. This self-induced hardship should not be used as justification for disturbing an existing wetland and drainage swale for the construction of a new driveway for 436 Winnacunnet Rd when a perfectly adequate and functioning driveway exists.

Mr. Diener opened the discussion us to the Public.

Ms. Mary Ellen Ajemian, Winnacunnet Rd., spoke against the application. She was concerned about water going on her property.

Ms. Maryann Hadeka spoke against the application, concerned about the trees and shrubbery.

Mr. Peter Olney spoke against the application. His concern was creating a hardship for this project and looking for sympathy from the Board.

Ms. Terry Brunette spoke against the application with concerns about the stumps, drainage (going on her property) and keeping snow out of the swale.

Mr. Diener brought the discussion back to the Board.

Mr. Page stated that the Conservation Commission holds an Agricultural easement on this Esker Rd parcel. The easement prohibits the construction or placement of buildings except those used for agricultural purposes or for dwellings use for family living by the landowner, his immediate family, or employees. It also prohibits excavation, dredging, or removal of loam, sod, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the land's future agricultural potential.

After evaluating the proposed project it was determined that the construction details lacked important design/technical specifications. The plan also lacks seasonal ground water evaluations which are critical for selecting the appropriate permeable paver or pavement base material and depth. This permit application should be considered incomplete until all of the design details are fully presented on the plan.

The Conservation Commission believes that the plowing of the driveway will cause snow to be directly dumped into the swale and onto the abutting properties. The parcel is not wide enough to support both

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### B. Esker Rd (cont)

The Conservation Commission believes that the plowing of the driveway will cause snow to be directly Dumped into the swale and onto the abutting properties. The parcel is now wide enough to support both snow storage and the passage of vehicles. The plan shows boulders along the top of the retaining wall but are not tall enough or close enough together to prevent snow from entering the swale. The piling of snow in a swale can cause flooding during snow melts and redirect the flow of water through the swale during freeze and thaw cycles. NHDES does not allow snow storage in a wetland and this should also apply to drainage features. Trucking the snow away was considered impracticable and difficult to enforce. The applicant also suggested a chain link fence to the top of the retaining wall, but was not shown on the plan nor was it considered an adequate solution to this issue.

After the presentation and discussion, Mr. Tilton motioned to oppose the DES Application as it does not contain sufficient evidence to support the need or practicality of altering an existing drainage swale and impacting a wetland for the construction of a driveway on the Esker Rd parcel. The Commission has reservations that the proposed alterations will adversely affect the storage capacity of the swale, restrict and redirect the flow of water, or impact abutters. The Commission cannot support a project where the magnitude of the risks has not been properly quantified. This swale is properly functioning and any changes to its current footprint are not recommended, especially for a self-induced hardship. Also the Hampton Wetlands Conservation District ordinance specifically states that the inland wetland projects involving roads, driveways, access ways, utilities and power lines applications for all necessary permits (state and town) shall be filed concurrently (Section 2.3.3 B-7e). The applicant has not filed a Town Special Permit for this project. Mrs. Goethel seconded the motion. With Mr. Loopley abstaining, all were favor.

### C. 48 Hobson Ave. Rick & Kelly Ford

This is an After-the-fact application for the enlargement of previously existing 8' x 6' deck. This is a Standard Dredge & Fill application. This application was not filed and it was the consensus of the Commission to table this appointment until the application is submitted.

## SPECIAL PERMITS

### A. 52 Nudd Ave Richard Atwood Ross Engineering - Agent

This is an After-the-fact application for repaving and expansion of an existing driveway and installation of a new drainage system within the limits of the Town-Right-of-Way (ROW) at 52 Nudd Ave. After the presentation and discussion Mrs. Goethel motioned to deny the Town Special Permit for the following concerns:

1. The property owner increased the roadside elevation of the driveway, expanded the driveway by paving the vegetated strip between 52 Nudd Ave and 50 Nudd Ave and filled in the existing roadside drainage swale. This has caused serious flooding for the abutter at 50 Nudd Ave. There is increased sheet flow across the elevated pavement onto 50 Nudd Ave and the storm water, which would normally travel through the roadside swale, now backs up into 50 Nudd Ave's driveway. The property owner of 50 Nudd Ave had followed the necessary permitting process in 2010 to reconstruct his driveway using permeable pavers and maintained the appropriate elevation to ensure proper on-site treatment of storm water without disturbing the existing drainage swale on Nudd Ave.

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SPECIAL PERMITS (Cont)

A. 52 Nudd Ave.

2. The proposed drainage feature in the Town's ROW is expected to correct the flooding issues caused by this violation. The Commission cannot support a storm water treatment design that involves Retrofitting the existing Town drainage swale and burden the Town with ongoing maintenance of an Underground structure for the sole purpose of correcting one property owner's error.
3. There are two roof gutters on the southeastern and southwestern sides of the building at 52 Nudd Ave which discharge onto the paved driveway and flow directly towards Nudd Ave. The southeastern roof gutter use to discharge onto the vegetated strip that has been replaced with pavement. The proposed drainage feature will accept this untreated roof runoff and pipe it to the catch basin at the end of Nudd Ave. This catch basin then empties directly into a tidal ditch. This is a prime example of point source pollution which the Commission cannot support.
4. The Commission recommends the unpermitted temporary shed with concrete slab and large outdoor Toolbox (both in the back yard, beyond the driveway) be removed from the 50 ft wetland buffer.
5. The plantings offered as mitigation at the rear of the property would be too close to the tidal ditch to provide absorption should be planted at least 5 feet closer to the house.

This portion of Hampton is densely developed and constantly deals with flooding. Therefore, the Commission strongly believes that the expanded sealed surface and proposed drainage should not be permitted because they have not been designed to treat storm water on-site and the current conditions pose threats to abutters and the health of the nearby salt marsh.

Ms. Renaud seconded the motion. With Mr. Loopley abstaining, all were in favor.

B. 11 Susan Lane  
James Hatzos

This is an After-the-fact application for the installation of crushed stone over an existing gravel driveway and the expansion of the rear portion of the driveway. Mr. Tilton motioned to recommend the granting of the Special Permit with the following stipulations and the usual stipulations:

1. The stone at the rear of the driveway adjacent to salt marsh shall be pulled back using hand tools only and placed strictly within the original driveway footprint
2. The property owner shall install landscape edging along the outer edge of the driveway to prevent the crushed stone from migrating toward and into the salt marsh.
3. The property owner shall schedule a site walk with the Conservation Coordinator to ensure that the Driveway edge has been properly delineated prior to the installation of the edging.

Ms. Renaud seconded the motion. With Mr. Loopley abstaining, all were in favor.

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**SPECIAL PERMITS (cont)**

C. 48 Hobson Ave.  
Kelly Ford

After-the-fact application for the enlargement of a previously existing 3 x 6 deck was withdrawn.

D. 311 Winnacunnet Rd  
Seacoast United Soccer  
Paul Willis  
Gove Environment - Agent    Lindsey O'Reilly , Wetlands Scientist

The property owner would like to construct an indoor basketball facility and associated parking. The construction will result in filling in three wetlands and their buffers. Mr. Diener opened the discussion up to the Public. Mr. England, 13 Wingate St., spoke in opposition to the project due to the wetlands. Ms. Kelly Britton, Francis St., spoke in favor of the project, stating that the children in town need more recreation facilities. Mr. Diener brought the discussion back to the Board. Mr. Diener stated that the Commission needs to be consistent with the enforcement of the Ordinance. The Commission's concern was the location of the building and filling in the wetlands (man made or natural). Mr. Tilton motioned to deny this Town Special Permit for the following reasons:

1. The construction of the proposed facility and associated parking area will require filling in 6,661 sq ft of wetlands and sealing 58,461 sq ft of wetlands buffer, wildlife habitat and open spaces. This is an extraordinary amount of impact with no on-site wetland mitigation. The design completely fails to comply with the Wetland Conservation District Ordinance (WCD).
2. Gove Environmental identifies three on-site wetlands as man-induced with little functional value. The Town wetlands ordinances treat all wetlands and their buffers equally regardless of their origin. The Commission cannot support any project that will result in the complete loss of wetland habitat.
3. Based on the Commission's review of the current plans and test pit data there is insufficient separation between the seasonal high water table and the proposed Cultec 280HD Chambers. The test pit report indicates that the depth to seasonal high water table for test pit #1 (chamber system location) is 24 inches below the surface. The surface elevation at the chamber location is 24 ft and the bottom of the Cultec Chambers (Plan D3) is 20.5 ft.  
The Commission believes this system will not function properly given the existing site-conditions. The Engineer was not available to address this concern.
4. As Hampton continues to deal with flooding and drainage issues, the importance of each wetland and the need to preserve them grows. It would be irresponsible of the Commission to approve a project that will only add to this Town-wide problem.

The Commission has never endorsed a project that proposes to fill in wetlands. Therefore, the Commission cannot support the destruction of an acre and half of wetlands and buffer. Approval of such a project would completely undermine the purpose of the WCD and set a precedent that could have unfortunate implications for the Town on future wetland projects.

Mr. Page seconded the motion. All were in favor.

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### **SPECIAL PERMITS (cont)**

#### **E. 7 Gill St Angelina Marquis**

This is an After-the-fact application for the installation of a 7' x 7' shed. The property owner was told when they redeveloped their property that there would be no additional buildings and was specially denied a shed in 2009. Yet a shed was built anyway. The violation was passed along to the Building Department for enforcement and was told the shed had to come down or apply for a special permit. The applicant has applied for the special permit. Mrs. Goethel motioned to deny the special permit for the following reasons:

1. In 2004, the Planning Board granted a special permit for the removal of the existing 2-family structure would negate this mitigation.
2. The 2004 special permit specifically stipulated that, "There will never be any further construction at the rear of the residence behind the newly constructed residence and the wetland boundary or into the wetland." This stipulation was important to the Commission because the footprint of the new 2-family Condex was substantially larger than the original structure and only 10 feet from the wetland edge.
3. In 2009, the Planning Board granted a special permit for the installation of a fence, but the request for an 8' x 8' shed was denied. The denial of the shed was based on the information provided above.

Mr. Tilton seconded the motion. All were in favor.

### **PLANNING BOARD REFERRALS**

None

### **PLANNING BOARD ACTIONS**

1. 52 Nudd Ave  
After-the-fact repaving of existing driveway and installation of a new drainage system.  
Continued to July 18, 2012
2. 35 Park Rd  
Special Permit extension. Granted to June 6, 2013.
3. Drakeside Rd  
Construction of two 9,200 sq ft, 24 unit multi-family structures with 102 parking spaces.  
Approved with Conservation Commission stipulations.

### **ZONING BOARD ACTIONS - DECISIONS**

None

### **DES ACTIONS**

None

### **OLD BUSINESS**

#### **A. 2012 Warrant Articles - Brainstorming**



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**NEW BUSINESS**

**A. Review phragmite cutting quotes.**

The quotes were \$4800 - \$3200.00. Mr. Page motioned to accept the quotes, seconded by Ms. Renaud. With Mrs. Goethel abstaining, all were in favor.

**B. July 11<sup>th</sup> Hampton Garden Club Meeting**

The Garden Club is asking for input at their meeting. Mrs. Goethel or Ms. Dionne will attend.

**CONSERVATION COORDINATOR UPDATE**

**TREASURER'S REPORT**

The next meeting of the Conservation Commission Public Hearing will be held on Tuesday, July 24, 2012, meeting in the Town Office Meeting Room. The site walk will be announced and will meet at the Town Office Parking Lot at 9:00 a.m.

Mr. Tilton motioned to adjourn at 10:45 p.m., seconded by Ms. Renaud . All were in favor.

Respectfully submitted,



Sue Launi  
Secretary